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9 CLASSIFICATION STANDARDS REGULATION

10 CONSULTATION MEETINGS

11 WITH THE HO-CHUNK NATION

12 taken on July 17, 2006

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21 Reported by Sherry G. Auge, RPR

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1       The Consultation Meeting with the HO-CHUNK  
2       NATION, was taken before Sherry G. Auge, a notary  
3       public in and for the County of Washington, State  
4       of Minnesota, on July 17, 2006, taken at the  
5       Sheraton Hotel, Lounge No. 3, 7800 Normandale  
6       Boulevard, Bloomington, Minnesota, commencing at  
7       approximately 1:03 p.m.

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9           A P P E A R A N C E S:

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11       ON BEHALF OF THE NATIONAL INDIAN GAMING  
12       COMMISSION:

13       PHILIP N. HOGAN, Chairman of the National  
14       Indian Gaming Commission, 1441 L Street NW, Suite  
15       9100, Washington, D.C. 20005;

16       CLOYCE V. CHONEY, Chairman of the National  
17       Indian Gaming Commission, 1441 L Street NW, Suite  
18       9100, Washington, D.C. 20005;

19       JOSEPH M. VALANDRA, Chief of Staff of the  
20       National Indian Gaming Commission, 1441 L Street  
21       NW, Suite 9100, Washington, D.C. 20005;

22       NATALIE HEMLOCK, Special Assistant to the  
23       National Indian Gaming Commission, 1441 L Street  
24       NW, Suite 9100, Washington, D.C. 20005;  
25       PENNY COLEMAN, Acting General Counsel for the  
  
      DIANE M. WRIGHT & ASSOCIATES

1 National Indian Gaming Commission, 1441 L Street  
2 NW, Suite 9100, Washington, D.C. 20005;

3 MICHAEL GROSS, Senior Attorney for the National  
4 Indian Gaming Commission, 1441 L Street NW, Suite  
5 9100, Washington, D.C. 20005;

6 JOHN R. HAY, Staff Attorney for the National  
7 Indian Gaming Commission, 1441 L Street NW, Suite  
8 9100, Washington, D.C. 20005;

9 JOHN PETERSON, Regional Director for the  
10 National Indian Gaming Commission, St. Paul Office,  
11 190 East 5th Street, Suite 170, St. Paul, Minnesota  
12 55101.

13

14 ON BEHALF OF THE HO-CHUNK NATION:

15 MICHAEL P. MURPHY, Tribal Attorney, Ho-Chunk  
16 Nation Department of Justic, P.O. Box 667, Black  
17 River Falls, Wisconsin 54615;

18 GREG LITTLEJOHN, Legislator for Area V;

19 DOUG GREENGRASS, Legislator;

20 TRIS HARRIS, Gaming Commissioner;

21 TRINA JOHNSON, Tribal Inspector;

- 22        ROGER CONLEY, Executive Director of Business;
- 23        SILAS CLEVELAND, Director of Gaming;
- 24        CAROL LAUSTRAP, Bingo Manager;
- 25        MICHAEL A. GOZE, Legislator;

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1 SHARON WHITEBEAR, Gaming Commissioner.

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1 WHEREUPON, the following proceedings were duly  
2 had:

3 COMMISSIONER HOGAN: Now, we'll go on the  
4 record. I'm Phil Hogan, Chairperson of the  
5 National Indian Gaming Commission. The record will  
6 show that we are gathered here pursuant to the  
7 notice that the National Indian Gaming Commission  
8 published from the Federal Register, with respect  
9 to consultation sessions we wanted to have on a  
10 government-to-government basis with tribes that are  
11 interested in commenting on the proposed  
12 regulations NIGC published on the 25th of May in  
13 the Federal Register relating to the definition of  
14 electronic facsimile of a game of chance, as well  
15 as classification regulations relating to equipment  
16 used to play Class II gaming activities.

17 We're gathered here on the 17th of July in  
18 Bloomington, Minnesota, at the Sheraton Hotel, and  
19 we're consulting with the Ho-Chunk Nation from  
20 Black River Falls, Wisconsin. And with the NIGC  
21 here, I'll introduce our team. And we have a large

22 delegation here, because this is a large body of  
23 proposed regulations and a number of us had some  
24 input, and we want to all gather what tribes think  
25 and have to say about this.

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1 Commissioner Chuck Choney is with me. John  
2 Peterson is our Executive Director from the St.  
3 Paul office. Natalie Hemlock is the Assistant to  
4 the Commission in our D.C. office. Penny Coleman  
5 is the Acting General Counsel, and from her office  
6 are Michael Gross and John Hay, attorneys in that  
7 office. And Joe Valandra is our Chief of Staff.

8 So if you'd like to go on the record and  
9 introduce yourselves, we'll then listen to what you  
10 have to say.

11 MR. ROBERT CONLEY: My name is Robert  
12 Conley. Pleasure to meet everybody.

13 MS. TRIS HARRIS: Tris Harris, Ho-Chunk  
14 Gaming Commissioner.

15 MR. MIKE GOZE: Mike Goze, with the  
16 Ho-Chunk Nation Legislator.

17 MR. DOUG GREENGRASS: Doug Greengrass,  
18 Ho-Chunk Nation Legislator.

19 MR. SILAS CLEVELAND: Silas Cleveland,  
20 Director of Gaming.

21 MR. MICHAEL MURPHY: Mike Murphy, Tribal

22 Attorney.

23 MS. SHARON WHITEBEAR: Sharon Whitebear,

24 Chairman of the Gaming Commission.

25 MR. GREG LITTLEJOHN: Greg Littlejohn,

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1     Legislator.

2           MS. TRINA JOHNSON: Trina Johnson, Tribal  
3     Inspector for the Gaming Commission.

4           COMMISSIONER HOGAN: Okay. We would be  
5     happy to hear your comments however you would like  
6     to proceed.

7           MR. MICHAEL MURPHY: Well, thank you.  
8     Many of us had a chance to go through these  
9     comments. As you can tell from the introductions,  
10    we represent a lot of different facets of the  
11    Ho-Chunk Nation: The governing body of the  
12    legislature; business department, Mr. Cleveland and  
13    Mr. Conley; our Tribal Gaming Commission as well as  
14    our Tribal Inspector.

15          We're trying to get as many eyes on this  
16    regulation as possible, and knowing that our  
17    comment deadline isn't until August, I think some  
18    of our questions or comments today might be more  
19    general and broader in nature. So, with that being  
20    said, I guess, I'd like to ask how the NIGC went  
21    about getting these published and whether it was a

22 product of only the NIGC, or if manufacturers were

23 also consulted with?

24 COMMISSIONER HOGAN: Let me try to

25 describe the kind of long and colorful history of

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1     these proposed regulations. Our Commission, Chuck  
2     and I, came on board in December of 2002, and one  
3     of the issues that we saw looming was the need to  
4     bring some clarity as to what tribes could do  
5     without a compact and what kind of equipment they  
6     could use only if they had a compact. But we  
7     weren't the first ones to discover that. That is,  
8     the commission that we succeeded had gone through  
9     this drill themselves. That is, they saw the  
10    evolution, the development of technology, in the  
11    play of bingo and things, and so they, first of  
12    all, proposed a set of classification regulations,  
13    heard some comments with respect to them, and,  
14    eventually, decided not to enact those.

15       They did, however, amend the then existing  
16    definitions with respect to electronic facsimiles  
17    of games of chance. And one of the things they did  
18    was to take the reference to the Johnson Act --  
19    that prohibits gambling devices in Indian country,  
20    generally -- out of the definition with respect to  
21    what's permissible as Class II, and they, also,

22 with respect to games similar to bingo said that  
23 those couldn't be banked games.

24 As I mentioned when our commission came on  
25 board, we saw this as one of the big issues, and

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1     so, shortly after we developed our consultation  
2     policy -- that we didn't have prior to that time --  
3     we formed a Tribal Advisory Committee to assist us  
4     in coming up with a solution to this challenge,  
5     which we thought at that time would be a set of  
6     regulations that would address this. And we asked  
7     tribes to nominate folks to serve on that Tribal  
8     Advisory Committee, and there was a good response.

9         We had folks that were casino managers in an  
10    environment where there was Class II play. We had  
11    tribal gaming commissioners and regulators. And  
12    that Commission met quite a number of times, and we  
13    then, with their assistance, came up with the  
14    proposed set of regulations. I can't say that all  
15    of the Advisory Committee fully endorsed, or  
16    agreed, with everything we said, but we certainly  
17    gave them an opportunity to have input in that  
18    process. We, actually, went through five drafts of  
19    those regulations trying to get to the right place.

20        In addition to the classifications regulations,  
21    which were most recently published here in May, we

22 proposed some technical regulations, that are a  
23 thicker set of regulations, more detailed, if you  
24 will, with respect to the computer technology,  
25 things of that nature.

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1       And in that connection, we hope and expect to  
2       publish that set of technical regulations, or a  
3       subsequent set of technical regulations, by the end  
4       of this month that will be a part of this package.  
5       They kind of got stale sitting on the shelf, and  
6       there were technologic developments we wanted to  
7       address, so that's why they haven't yet been  
8       republished, but a year ago this last spring, we  
9       thought we were on the cusp of publishing those  
10      regulations, or something like them, when the  
11      Justice Department expressed concern that they  
12      might not be consistent with the Johnson Act.  
13      And as you're probably aware, there's a series  
14      of cases out there where the Justice Department saw  
15      gaming activity occurring with the use of  
16      technology, and they thought it constituted a  
17      violation of the Johnson Act, when there was no  
18      compact, Mega Mania, bingo games, the Lucky Tab II,  
19      pull-tab dispenser games. So there developed a  
20      body of case law. The Justice Department was on  
21      the losing end in that connection.

22        During last summer, we spent a lot of time  
23        talking with the Justice Department as they  
24        attempted to come up with a way to make all of this  
25        come together, and last fall, they announced they

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1       were gonna seek an amendment to the Johnson Act  
2       that would carve out an exception for technologic  
3       aids not to be prohibited by the Johnson Act if  
4       played pursuant to the Indian Gaming Regulatory  
5       Act. And part of that proposal was going to have  
6       NIGC write regulations relating to those.

7       So we, NIGC, waited for the Justice Department  
8       to send up to Congress their proposal to amend the  
9       Johnson Act, and it was a long wait. So, finally,  
10      earlier in the spring, we went over to the Justice  
11      Department and said, we wish you well in this  
12      effort to amend the Johnson Act. That needs to be  
13      done, but we just can't wait any longer with our  
14      proposed regulations. And so we published them  
15      what we have before us.

16      These are very similar to the fifth draft that  
17      we had prepared with the assistance of the Advisory  
18      Committee, but it does reflect a couple of the  
19      things that we discussed with the Justice  
20      Department, at great length, like the speed of  
21      play, how much of the display has to be devoted to

22 a bingo card, if it's a bingo game, things like

23 that. So we published these in May.

24 Shortly thereafter, the Justice Department did

25 send to Capitol Hill, to Congress, a proposal to

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1 amend the Johnson Act that would also mandate NIGC  
2 to promulgate regulations in this regard, so we see  
3 those two efforts: Justice Department's effort to  
4 amend the Johnson Act, and our proposing of  
5 regulations to be complimentary to one another, not  
6 an either/or deal.

7 If they never get the Johnson Act amended, so  
8 be it. We'll go forward with our regulations. If  
9 they do, and it requires us to do something  
10 different with our regulations, we stand ready to  
11 be responsive to that, but that's where we are.

12 And pursuant to our consultation policy, we wanted  
13 to get further tribal input, so we are here in  
14 Minneapolis.

15 We were in Washington D.C. last week. We're  
16 going to the Northwest in a couple of weeks and  
17 southern California and, then, out to Oklahoma, and  
18 our goal is to get all of this input. I think the  
19 written comment period terminates in late August  
20 and coming out this fall with a set of regulations.  
21 So, I think, that's generally the history.

22           MR. MICHAEL MURPHY: So by that time, you  
23    think that the technical rule will also be  
24    proposed?

25           COMMISSIONER HOGAN: Yes. And, ideally,

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1 we'd be able to adopt them all as a package.

2 MR. MICHAEL MURPHY: Is the technical set  
3 of rules similar to a prior proposal?

4 COMMISSIONER HOGAN: Yes. It will be a  
5 refinement of that. Michael, do you want comment  
6 on where we might advance or be different from  
7 that?

8 MR. GROSS: We had, in the course of  
9 developing the classification regulations,  
10 originally envisioned those as having a section of  
11 them, technical standards, for how you built the  
12 boxes. And once we got further into that, we  
13 realized that the technical standards have sort of  
14 a life of their own, and so the Commission broke  
15 them out as a separate intended -- or sections of  
16 the regulation. Those, we had published two drafts  
17 during the period that we published the five drafts  
18 of the classification regulations. And like the  
19 classification regulations, those sat on the shelf  
20 for a year beginning in March '05, or so.

21 And so when the Commission decided to go ahead

22      again with the classification regulations, we  
23      picked up the technical regulations and started  
24      dusting them off and made sure there aren't things  
25      missing in them, which there turned out to be,

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1 things like wireless communication, which is making  
2 its presence known on the casino floor. So how do  
3 you secure wireless communications in addition to  
4 communications over the wire? That's sort of the  
5 procedural background.

6 Substantively, they are designed not to say how  
7 the game is played, but how the boxes are built, so  
8 how many keys do you want to use to lock your bill  
9 stacker? What kind of meters do you want to have  
10 in your electronic player stations, and what kind  
11 of communications will the player stations have  
12 with the server, and so on and so on and so son.

13 MR. MICHAEL MURPHY: And to come up with  
14 those technical standards, did the NIGC consult  
15 with GLI or anything?

16 MR. GROSS: We hired a contractor,  
17 actually. We hired -- it was an open bid contract,  
18 and the winner contractor was BMM Gaming Lab, so  
19 they were the first author, if you will. And then,  
20 we took it and massaged it and changed it, and what  
21 came out was something that a lawyer would

22 recognize. Hopefully, lawyers who speak  
23 engineering well enough to make coherent technical  
24 standards.

25 But as we were publishing those, we got a lot

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1 of feedback, both from the industry and from  
2 tribes, about what these things should look like.  
3 Where do we need incrypted communications, where  
4 don't we need incrypted communication. And by and  
5 large, that effort has been a cooperative one  
6 across all the interested parties. We had tribal  
7 regulators, industry manufacturers, and the  
8 Commission.

9 MR. MICHAEL MURPHY: I imagine, you're  
10 getting a lot of positive feedback from tribes at  
11 the realization of all these new regulations  
12 they're gonna be getting? I'm joking.

13 COMMISSIONER HOGAN: Although several  
14 tribes have reminded us they are for a good strong  
15 regulation. We agree with that.

16 MR. MICHAEL MURPHY: Yeah. Well, many of  
17 you probably are familiar with Ho-Chunk and our  
18 gaming commission. Sharon Whitebear can speak to  
19 that, but we have a very, very strong gaming  
20 commission. We have our own Class II regulations,  
21 obviously, our -- our reports have gone to the NIGC

22 in the past, and it just, like many other tribes,  
23 we probably wouldn't -- wouldn't prefer to have all  
24 these regulations, especially, when it comes down  
25 to tribal business. Actually, I think, Silas, you

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1 can probably speak to that.

2 MR. SILAS CLEVELAND: I'm the Director of  
3 Gaming, and my discussion here is not technical, in  
4 terms of going into the nuts and bolts of what's  
5 being proposed. My comments are mainly based on  
6 the philosophy in terms of how these regulations  
7 are brought forward. From taking an overall view  
8 of the proposed regulations, it looks like from a  
9 business perspective, that you are creating a  
10 noncompetitive game, essentially, deconstructing  
11 the Class II industry.

12 Now, the history of the United States  
13 government is, in recent times, is that the United  
14 States government isn't providing more native  
15 funding. They're providing less native funding.  
16 So in terms of the ramifications for my tribe and  
17 any other tribe that's out there running Class II,  
18 in the Class II industry, and being profitable in  
19 those items, is the United States government  
20 looking at the ramifications of taking this  
21 industry away and replacing those revenues.

22        If you destroy an industry, where is the  
23        funding gonna be for the tribes that are successful  
24        and have taken many strides in becoming successful?  
25        If the tribes realize a drastic drop in

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1     profitability, what is the United States government  
2     going to do?

3         So from a philosophy side, it is a  
4     noncompetitive game. With the regulations that are  
5     proposed today, we will not be able to move our  
6     Class II revenues forward. We believe on the  
7     gaming side that there's what was used in the  
8     Johnson Act discussions a bright line, and the  
9     bright line test from my small vantage point, being  
10    a very logical person is, we'll take a game,  
11    somebody whose played a Class II, somebody whose  
12    played a Class III, and say, can you tell which  
13    game is based on a bingo game? Is there a bright  
14    line distinction for you, as a gamer? 'Cause this  
15    is purely a voluntarily act to game.

16        And some of the items that are within the  
17    proposed regulations, I believe, that you can  
18    logically have exceptions built that when they  
19    place their money in the machine, they wanted to  
20    play this game as opposed to touching screens. By  
21    that act of placing that money into that machine,

22 well, they've made a logical decision at that point  
23 that they understand what they're going to be  
24 playing.  
25 So in terms of the game, the speed of the game,

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1 all those things, really push these regulations to  
2 deconstruct in the Class II industry. So from a  
3 business ramification side, what is the United  
4 States government willing to do, 'cause we can't  
5 think of regulations that are being promulgated  
6 here to be looking through a simple straw, because  
7 we are not simply straws here.

8 And when we're talking about regulations, the  
9 United States government has a fiduciary power to  
10 the tribes, a responsibility that, if the rules and  
11 the laws that are created, if there's gonna be a  
12 flaw, well, then be flawed in favor of the tribes.  
13 I believe there's a flaw, and it is not in favor of  
14 the tribes. So those are my comments as far as the  
15 gaming industry, this Class II facility, and the  
16 regulations that are being proposed today.

17 So thank you for the time, and thank you for  
18 hearing what my concerns are as far as the business  
19 side is concerned.

20 MR. VALANDRA: Can I ask you one question  
21 just so I'm clear: On the competition side, are

22     you comparing Class II, Class III in terms of  
23     making your comment about its effect on competition  
24     or --

25             MR. SILAS CLEVELAND: I'm talking about

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1 our customer, customer preference.

2 MR. VALANDRA: So the definition is the  
3 player perception?

4 MR. SILAS CLEVELAND: Yep. The player  
5 perception as far as when they come into our  
6 facility and play our Class II games, that they  
7 understand what -- what they're coming there and  
8 what they expected as far as expectation is  
9 concerned. I'm not talking about Class II, Class  
10 III, which one would they pick. I'm talking about  
11 from a competitive side of entertainment that's out  
12 there, this makes it a noncompetitive game in  
13 entertainment.

14 COMMISSIONER HOGAN: Let me just respond  
15 to that as well. We take our role very seriously,  
16 and we do have a trustee role to play and fulfill,  
17 and the last thing I want to have happen is to have  
18 Indian gaming, which has been such a grand success  
19 so many places, falter while it's on my watch.

20 And I'm concerned that if we reach the point  
21 where, for all intents and purposes, you can't tell

22 the difference between Class II and Class III, that  
23 is, if you come up, and you do the same thing to  
24 play one game as you do the other, that a very  
25 significant part of IGRA will have gone by the

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1     wayside or be lost, and that will put this grand  
2     success at risk. So I'm hoping that we can  
3     clarify, preserve the success by brightening the  
4     line that divides what you can't do unless you have  
5     a compact, and what you can do with a compact, so  
6     that when tribes go, for example, to the governor's  
7     office in Wisconsin, or elsewhere, and say, hey,  
8     we've got illegal competitors out here. They're  
9     playing machine that don't go by the rules, that  
10    we'll have credibility when we go there that they  
11    will know that, yes, we have a scheme, and we are  
12    rigidly enforcing and going by the rules that were  
13    written, and that, you know, somebody doesn't come  
14    along and say, it's all the same. Let's put it all  
15    in one basket. You got to go to the State for all  
16    your gaming. That would not be good for gaming.

17       Now, as we try and do this, we've got to be  
18    very careful that we don't kill this goose that  
19    laid the golden egg, that we don't make it so slow,  
20    so restrictive, that nobody can do that. We think  
21    that we are accommodating a fast, fun, fair,

22     profitable scenario, but there's, obviously, going  
23     to be a difference between a bad experience and the  
24     slot machine, push the button once, and it's all  
25     over content. So I understand the concern that you

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1 express, and we're gonna try and have that foremost  
2 in mind as we, hopefully, get to the right place.

3 MR. PETERSON: Can I add something,  
4 Mr. Chairman? Right after I came down from lunch,  
5 I had a phone call from the State of Wisconsin  
6 asking me what my opinion was of your machines over  
7 at Dejope's, Class II machines, so they're looking  
8 at what's going on, just a little bit of a heads  
9 up.

10 MR. MICHAEL MURPHY: Yeah, Linda's called  
11 me, too.

12 MS. TRIS HARRIS: Can I ask what your  
13 opinion was?

14 MR. PETERSON: Pardon?

15 MS. TRIS HARRIS: Can I ask what your  
16 opinion was?

17 MR. PETERSON: I just saved the message,  
18 I'll get back to her later.

19 MR. MICHAEL MURPHY: Good answer.

20 MR. PETERSON: There we go.

21 MR. MICHAEL MURPHY: Well, Mr. Chairman,

22      that's probably not the first time you've heard  
23      concerns about the business impact and taking these  
24      regulations plus the technical ones that are on the  
25      way, that probably translates into greater burdens

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1 and costs on a tribe, right? I read these, and I  
2 thought, well, this also now means that any  
3 contracts we have with manufacturers will have to  
4 account for all of this, and in some cases could  
5 scare off manufacturers. But I think in most  
6 cases, will lead to increased costs on the tribe.

7 And at the same token, any time I see more  
8 regulation from the NIGC, I think, greater fees,  
9 'cause you'll need the staff to do these things. I  
10 doubt you have it now, right?

11 COMMISSIONER HOGAN: Well, we were  
12 concerned that we could build a model that would  
13 make us the bureaucratic bottleneck if we had our  
14 own NIGC lab, and so forth. Then, we would need  
15 more dollars, and so forth, but the approach we've  
16 taken is we're gonna write the rules, and then,  
17 we're going to permit a tribe to choose the  
18 independent testing laboratory. And there aren't a  
19 lot of them out there, but Nick Farley, and GLI and  
20 BMM are among those that are there, and they tested  
21 and said, yes, this does meet the rules. You're

22      good to go. If they say it doesn't, you'd have to  
23      tinker with it a little bit. NIGC would have the  
24      right to second-guess, I guess, but, I think, for  
25      the most part we would respect what they would

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1 determine.

2 So, hopefully, this won't mean a necessity to  
3 increase staff or increase fees, but it will -- I  
4 think the manufacturers will breathe a sigh of  
5 relief when they know, okay, we know if we build it  
6 this way, it'll be Class II, and suddenly, somebody  
7 isn't gonna come along and say, we got to take all  
8 these machines back. They don't fit anymore. So  
9 there may be eventually benefits in that  
10 connection.

11 MR. MICHAEL MURPHY: Okay. Have you --  
12 remember in Class III regulations, the Colorado  
13 River Indian Tribe litigation? Have you thought  
14 that, maybe, you'll get the same sort of challenge  
15 with these types of regulations?

16 COMMISSIONER HOGAN: I expect the day the  
17 ink is dry on whatever we do, we're gonna get sued,  
18 and that will be a good thing, because we need to  
19 know if this is legal. We think we're gonna do it  
20 legal, but we will -- I expect some tribe will say,  
21 you drew the line too far away. You did that in an

22 arbitrary and capricious way. Court set these  
23 aside. And the court will either say, well, it  
24 looks like they do have the discretion to do this,  
25 or, no, there wasn't any solid basis to do this.

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1 Eventually, we'll get to the right place, but  
2 that's the way laws get made, finalized, clarified.

3 MR. SILAS CLEVELAND: In terms of the  
4 intent of the Indian Gaming Regulatory Act for  
5 native tribes to benefit from operating gaming, how  
6 does that fall in line with the intents of those  
7 laws in terms of being competitive and not  
8 competitive in that context?

9 COMMISSIONER HOGAN: Well, IGRA, among  
10 other things, directed the NIGC to set some federal  
11 standards, and it also said you can do Class II  
12 gaming with technologic aids, but you can only do  
13 an electronic facsimiles of a game of chance with  
14 compacts. And we think one of the standards, then,  
15 it's logical for us to come up with, is clarity  
16 there. That will -- so everybody, states, federal  
17 regulators, tribes, gaming manufacturers will know  
18 what falls in what -- what activity falls into one  
19 class. What activity falls into the other. And I  
20 think that will accommodate the over or eventual  
21 economic success of Indian gaming.

22           Greg, did you have a question or comment?

23           MR. GREG LITTLEJOHN: Well, yeah. It's a

24           little late, I guess, in response to Mr. Peterson's

25           comment about the call from the State of Wisconsin.

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1 We firmly believe that the machines that are at  
2 Dejope Park are Class II under the current  
3 regulations.

4 You might want to ask that person, also, on the  
5 regulatory side of the State of Wisconsin the  
6 tavern leagues. We were reported to be in excess  
7 of a billion dollars, all tribes in the State of  
8 Wisconsin, which I think is on the high side, but  
9 at that United Tribes of Wisconsin meeting -- I  
10 think, it was two months ago -- an estimate was  
11 thrown out there of 1.2 billion dollars that the  
12 tavern leagues in Wisconsin are doing with their  
13 illegal video poker machines. You might want to  
14 throw that back at them, please? Why are they not  
15 regulating that?

16 MR. SILAS CLEVELAND: To go along with  
17 Greg's comment there with the tribes -- the tribes  
18 were intended to benefit from gaming. And in the  
19 state of Wisconsin, we have tavern gaming,  
20 essentially, with these boutique casinos all across  
21 our state. How is that protecting, or making sure

22       that we are under this, even though you're to  
23       regulate what we do, but even outside of that, in  
24       protecting us from the illegal gaming. The real  
25       crime.

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1           COMMISSIONER CHONEY: Well, we've already  
2       heard that this morning from one of the previous  
3       tribes that came in. We don't know what to tell  
4       you. We've also gone to the State of Wisconsin and  
5       brought that to their attention and told them that  
6       that's illegal, and, also, reminded them of the  
7       large amount of revenue that they're missing out  
8       on, the State. And the bottom line is the only way  
9       to truly, effectively, fight this against these  
10      private taverns, bowling alleys, all these others  
11      places where these machines are, you know, you  
12      mention the United Tribes of Wisconsin. Have you  
13      all put together a task force or a working group to  
14      get together all tribes, not only the gaming  
15      tribes, but all the tribes, to get a united effort  
16      to approach the State of Wisconsin on this?  
17      That's the only way you're gonna be able to  
18      effectively counteract that, not just one tribe  
19      can't do it by themselves. Two tribes can't do it  
20      by themselves. It's gonna take a full, united  
21      effort.

22 MR. SILAS CLEVELAND: Maybe, can you steer  
23 us to who regulates the non -- illegal gaming?

24 COMMISSIONER HOGAN: Well, we regulate it  
25 when it's in Indian country, and when it's not, we

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1 don't, and therein lies the problem. We have, as  
2 Chuck mentioned, asked, pleaded with the State of  
3 Wisconsin to make a level playing field out there,  
4 but we haven't been successful. But, as we told  
5 them, you know, the other Wisconsin tribes we met  
6 with, we aren't done yet. We're gonna make some  
7 calls whether it's to the governor's office or the  
8 Attorney General or the local prosecutor and see if  
9 we can't get everybody to play by the rules.

10 MR. PETERSON: I've had great success in  
11 getting machines off the reservation. Does that  
12 count?

13 MR. GREG LITTLEJOHN: That's one small  
14 step --

15 MR. PETERSON: -- for mankind.

16 MR. SILAS CLEVELAND: For the tavern  
17 league.

18 MR. GREG LITTLEJOHN: If I could just  
19 respond to what Commissioner Choney said. At the  
20 United Tribes of Wisconsin meeting, we do discuss a  
21 concerted effort, and we're not just turning the

22 other cheek to what's going on. However, you also  
23 know that the Tavern League of Wisconsin is a very  
24 powerful entity, has good friends on the Hill in  
25 Wisconsin, so we are looking at, yes, what can we

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1 do to correct the situation, if it's correctable at  
2 all, I guess.

3 MR. MICHAEL MURPHY: I have a question  
4 that has really more to do with some specific  
5 language in the Rule for 546, where it talks about  
6 how you've got to come up with a compliance program  
7 once these regulations are in effect, but is there  
8 a deadline by which a tribe will have to have that  
9 in place?

10 MR. HAY: As of now, if you are an  
11 existing facility, it would have to be six months  
12 after the regulations are finalized. If you aren't  
13 open yet, before you can open, you'd have to have a  
14 program in place. So that's the deadline as it's  
15 written today.

16 MR. MICHAEL MURPHY: Okay. So the  
17 compliance program in place within the six months,  
18 hypothetically, then, it is sometime after that?  
19 Say we've got existing Class II games in our bingo  
20 facilities. I read the rules to say we're not  
21 gonna be grandfathered in, right?

22 MR. HAY: Correct.

23 MR. MICHAEL MURPHY: We got to submit

24 those for certification as well. Will there be a

25 deadline for that? Is that the six months?

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1 MR. HAY: That would be the six months.

2 MR. MICHAEL MURPHY: Six months to get the  
3 compliance program in place plus get the  
4 certification on the existing games?

5 MR. HAY: Right.

6 MR. MICHAEL MURPHY: Or else get an  
7 extension of time?

8 COMMISSIONER HOGAN: Now, in the earlier  
9 consultation that we did, there was concern  
10 expressed about everybody's gonna be at the labs'  
11 door. We can't get all of this done overnight.  
12 And we certainly are sympathetic to that. If that  
13 appears to be the case, we'll try to be more  
14 realistic. If on the other hand, there's enough  
15 capacity to do this, we'd be less likely to make  
16 the change.

17 MR. MICHAEL MURPHY: Okay. Considering  
18 these regs, as well as the technical ones that are  
19 coming, doesn't this look a lot like a Class II  
20 mix?

21 COMMISSIONER HOGAN: Well, they are --

22 MR. MICHAEL MURPHY: I'm not calling it

23 that but --

24 COMMISSIONER HOGAN: There are standards

25 that apply, so, well, in that connection, probably,

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1       some parallels can be drawn.

2           MR. MICHAEL MURPHY: I had another one,  
3       the smaller set, 502. It's 502.8, and, actually, I  
4       think it tries to define electric, or  
5       electromechanical facsimile, but the provision  
6       defines it with the same words. It says, under Sub  
7       (a) of 502.8, electronic or electromechanical  
8       facsimile means a game played in an electronic or  
9       electromechanical format. Is a definition for that  
10      somewhere else, to know what an electric or  
11      electromechanical format is? Would that be in --

12          COMMISSIONER HOGAN: You mean, you're  
13      saying, we ought to define what electronic is, and  
14      what electromechanical is? Is that part of your --

15          MR. MICHAEL MURPHY: That's what I'm  
16      asking you. Is that in 546?

17          MR. HAY: No, it's not. It's kind of -- I  
18      see what you mean. It's kind of a circular  
19      definition here, but, I think, it would go back to  
20      what the common usage of the word, like, electronic  
21      or electromechanical is, and that's just to make

22       sure it's not paper bingo that we're talking about

23       here.

24               MR. MICHAEL MURPHY: Okay. Any other

25       comments?

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1 MS. SHARON WHITEBEAR: I do. Thank you  
2 for the opportunity to talk with you today. I'd  
3 like to talk about the technological aids, the  
4 technical standards. Are those standards -- like,  
5 'cause, right now, we have Class II machines in our  
6 facility. We ask -- the Commission always asks the  
7 general manager, or the director of gaming, if  
8 those machines have been submitted, and do they  
9 have a letter of certification that they are Class  
10 II machines. Now, will those suffice, or do we  
11 still have to do this compliance program?

12 We're always try to make sure that the machines  
13 that are coming on to our property are Class II,  
14 and we ask the vendor. We put the responsibility  
15 on the vendor, 'cause the tribe doesn't need that.  
16 You know, it costs a lot of money to have all these  
17 machines certified, so, I guess, that's -- I was  
18 asking if that's what we need to do. If we have  
19 certification from the vendor and provide it to  
20 NIGC, will that suffice in our compliance program?

21 COMMISSIONER HOGAN: Well, it would be

22 something like that. However, if we wave the wand,  
23 and these regulations were in place tomorrow, the  
24 first thing we would do is scamper out there and  
25 certify those folks that said they were ready to

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1     test the machines pursuant to NIGC's standards. We  
2     might certify GLI and BLM (sic) -- and BMM and Nick  
3     Farley, and say, okay, so we'd want to be sure they  
4     knew what they were doing. Then, they would have  
5     to test the machines against this new set of  
6     standards, which weren't in existence when you put  
7     those on the floors, so you would have to get a new  
8     certification. It might be a lot like what they've  
9     already done.

10       Now, there are a couple of other things that  
11       are out there, that is, NIGC has issued advisory  
12       opinions about a number of games, saying, well, we  
13       don't have any rules, but this is our best shot.  
14       We think if you do it this way, it's Class II.  
15       That's part of the problem, that is, they really --  
16       that was just kind of by the seat of our pants,  
17       case by case. Now, we'll have of set of rules that  
18       will, hopefully, guide the whole universe.

19       So you will have to get a new certification  
20       with respect to the equipment that's out there,  
21       but, you know, the day will come when that'll be

22 the first step for every machine that's placed on  
23 the market. And the tribes will be, you know,  
24 better equipped to make those purchase decisions or  
25 lease decisions and so forth.

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1 MS. SHARON WHITEBEAR: So, originally,  
2 when those technical standards came out, it seemed  
3 like they were adapted from GLI standards, or  
4 standards similar to that, and if we're trying to  
5 clarify from II to III -- there are some language  
6 in those ones that didn't get published, or they  
7 were published and didn't go anywhere. Like you  
8 said, they sat on the shelf, and, you know, we  
9 commented on those, and it was, really, kind of  
10 like a hindrance.

11 I mean, who's going to take the time to do all  
12 of that work to -- so like Mr. Murphy was saying  
13 talking to the staff. Who's going to be doing that  
14 on the NIGC side to make sure that these are all  
15 done? And is it going to be additional cost to the  
16 tribe? Is NIGC gonna be assessing us on more fees?

17 COMMISSIONER HOGAN: I think not. I think  
18 when John and his folks, you know, walk onto your  
19 floor and there are Class II devices there, if  
20 these regulations are in place, a question that's  
21 gonna occur to him is, okay, are these machines

22       those that have been certified as meeting the Class  
23       II standards, and there will be, you know, a  
24       documentation or a way to identify those.  
25       And that -- he's not gonna sit there and

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1       dissemble the machine or have the staff with him to  
2       do that. It'll be, did they pass the test or not.  
3       Does it have the GLI seal on it or letter for that.  
4       So I don't think it will require --

5               MS. SHARON WHITEBEAR: So then, once the  
6       certification and we follow this whole program,  
7       when will NIGC be monitoring that or when will they  
8       conduct the, say, an audit, a compliance audit?

9               COMMISSIONER HOGAN: Well, I expect the  
10      day after these become final, and in six months get  
11      the compliance program up and running, we'll start  
12      that process. I'm sure we won't get to every  
13      drivable gaming facility that first day.

14              MS. SHARON WHITEBEAR: Why not?

15              COMMISSIONER HOGAN: Because we don't have  
16      the staff, and we don't want to assess any more  
17      fees (laughter).

18              MR. MICHAEL MURPHY: Is that on the  
19      record?

20              COMMISSIONER CHONEY: But we can be  
21      walking through your door at any time.

22 MS. SHARON WHITEBEAR: Good.  
23 MR. PETERSON: Right now, Sharon, the only  
24 ones that are considered Class II are the ones that  
25 are published on our website.

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1 MS. SHARON WHITEBEAR: Right.

2 MR. PETERSON: I'm sure that's what you  
3 have, right?

4 MS. SHARON WHITEBEAR: Of course. We  
5 always have that in hand. When there's a vendor  
6 that comes, we always have those in hand saying,  
7 are they part of these machines? I mean, we're a  
8 very proactive Commission to make sure that with  
9 everything that we have in our facilities is within  
10 compliance and the federal guidelines and our own  
11 guidelines, 'cause we are the ones that have to  
12 answer to it, the Commission does, so we take it  
13 very seriously.

14 MR. SILAS CLEVELAND: As my final comment  
15 in terms of discussion here is that the Indian  
16 Gaming Regulatory Act for Class II does give the  
17 nations, the native nations, the right to regulate.  
18 Have you guys considered that when developing this  
19 construction here? Have you guys looked at those  
20 items, and how much do we let them regulate, and  
21 how much do they want to regulate? Have you gone

22 out to the commissions out there and said -- had a  
23 real, open, round table discussion as opposed to 45  
24 minutes in the middle of the United States, and  
25 say, okay. We met them.

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1           COMMISSIONER HOGAN: We talked about this.

2       We discussed it a lot during the Advisory Committee  
3       process and as we were drafting these things. A  
4       reason that it became, I think, so necessary to  
5       move in the direction of having these is we found  
6       ourselves in places like Oklahoma, where you had  
7       tribes literally right across the street from one  
8       another competing in the same market for the same  
9       business.

10       And at that time, they were in a state where  
11       they couldn't get a Class III compact, so each one  
12       wanted to offer a little faster, zippier machine.  
13       And if we were just going to leave it to each  
14       individual tribal gaming commission to decide, this  
15       is where you draw the line between Class II and  
16       Class III, it was just -- there wasn't gonna be any  
17       standardization, and it was gonna be more confused  
18       rather than less.

19       And we felt in that kind of an environment,  
20       it's important for us, following that mandate of  
21       Congress in the Indian Gaming Regulatory Act, to

22 write some federal standards to come up with that  
23 bright line distinction. We want tribes to be  
24 involved in this process. They would have their  
25 compliance program, but we're kind of saying, okay,

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1       this is the starting line. Now, you take it from  
2       there.

3               MR. MICHAEL MURPHY: Well --

4               COMMISSIONER HOGAN: Okay. I guess, we're  
5       about out of time. We want to thank you for coming  
6       to Minneapolis to speak with us, and we will take  
7       all of this into consideration. Should you think  
8       of something else when you get home, please send us  
9       a letter. The record will be open, and we'll  
10      encourage you to --

11              MS. HEMLOCK: We encourage you to submit  
12      your written comments before the 23rd of August.

13              MR. MICHAEL MURPHY: Now, since these are  
14      all being recorded with tribes, is there a way to  
15      get a transcript at a later date?

16              COMMISSIONER HOGAN: Yes. It'll be awhile  
17      before that's worked out it, but it may be well  
18      published on the website as well.

19              MR. SILAS CLEVELAND: I got one last  
20      comment, and this comes from the president of our  
21      tribe, and that, if he wanted to know if there was

22      gonna be provisions in terms of, if there is a  
23      drastic drop in profitability and the Class II  
24      industry is destroyed, that it'd be grandfathered  
25      into Class III facilities. As a consideration --

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1 if you're gonna destroy an industry, what are you  
2 going to replace it with as a provision? That is  
3 something that the president wanted me to convey.

4 COMMISSIONER HOGAN: I will take that  
5 interest under advisement.

6 (Whereupon, the proceedings concluded at  
7 approximately 1:55 p.m.)

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1     STATE OF MINNESOTA )  
                                  ) SS  
2     COUNTY OF WASHINGTON)

3         Be it known that I took the verbatim record of  
4     the National Indian Gaming Commission's  
5     Consultation Meetings regarding Classification  
6     Standards Regulation on July 17, 2006, at The  
7     Sheraton Hotel, 7800 Normandale Boulevard,  
8     Bloomington, Minnesota 55439;

9         That I was then and there a notary public in  
10     and for the County of Washington, State of  
11     Minnesota, and that by virtue thereof I was duly  
12     authorized to administer an oath but did not;

13         That the conversations of said participants was  
14     recorded in stenotype by myself and transcribed  
15     into typewriting, and that the Consultation  
16     Meetings is a true record of conversations given by  
17     the participants to the best of my ability;

18         That I am not related to any of the parties  
19     hereto nor interested in the outcome of the action;

20         That I am not financially interested in the  
21     action and have no contract with the parties,  
22     attorneys, or persons with an interest in the  
23     action that affects or has a substantial tendency  
24     to affect my impartiality;

25         That all parties who ordered copies have been  
26     charged at the same rate for such copies;

27

28         WITNESS MY HAND AND SEAL THIS 24th day of July,  
29     2006.

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Sherry G. Auge  
Court Reporter

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